

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Lisa Goldman
Acting City Manager

Date: March 15, 2011

Re: Award a Contract in the Amount of \$69,390 Annually for a Period of Five Years to Accela, Inc. for Accela Automation Land Management and Citizen Access Software Licenses and Managed Service Fees, and Authorize the Acting City Manager to Execute the Contract and Related Documents

BACKGROUND

In 2001, the City of Alameda entered into a five-year contract with Accela, Inc. to provide permit-tracking software in a hosted environment. This contract was renewed for an additional five years in 2006. Initially, this software was utilized by Community Development for the tracking of construction permits from application through final inspection. Over time, functions have been added to track work product for Planning, Public Works, Alameda Municipal Power (AMP), Code Enforcement and Fire Prevention. In 2010, the City added Accela's Citizen Access Module, which allows the online application and issuance of simple permits and 24/7 public access to permit records, inspection results, and the status of permits dating back to the early 1980's.

DISCUSSION

Community Development, Public Works, Fire Prevention and AMP utilize the Accela Automation Land Management system to track all activities processed through the Permit Center. Additionally, Code Enforcement uses the system to track the status of code complaints, and Fire Prevention tracks annual fire inspections. This system is managed off-site and is therefore available 24/7 through any internet connection. As this is a hosted application, all storage, backup, maintenance and regular updates are handled off-site and across all users.

In early 2010, the City upgraded the public accessibility of this system. Currently, members of the public can access historic permit records including inspection results dating back to the early 1980's. Current permit information is also available online. Applicants or interested parties can track the status of a project as it moves through the review process. This includes the immediate access to plan review comments, conditions of approval and inspection results. Licensed contractors, with a valid City Business License, can apply for and obtain permits for simple projects. These projects include water heaters, re-roofs, electrical service changes, furnace replacements, etc.

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03-15-11

Staff is presently working with Accela to develop the ability to handle more complex projects entirely online and hopes to begin testing that capability in the near future.

The proposed annual contract of \$69,390 is split between the Community Development Department (\$54,097.65) and Fire Prevention (\$15,292.35). Revenues generated through the collection of the Permit Tracking Fee on each permit are sufficient to cover the Community Development portion. Fire Prevention Inspection fees cover that portion of the contract.

Several other companies that provide land management tracking were asked to quote a price to provide a comparable product. Of the three companies contacted, one did not respond. One responded and provided a bid that was competitive with that from Accela on an annual basis. However, when coupled with the cost to convert to a new system and the staff time necessary to complete this conversion, this vendor's overall cost was higher than Accela's. The quote from the remaining company was far in excess of Accela's proposed cost and would not be for a hosted product, therefore, requiring the upgrading of at least one City-owned server to handle the workload. Additionally, the proposed annual cost for Accela represents a 7.5% decrease from the current annual contract price, resulting in a savings of \$28,000 over five years.

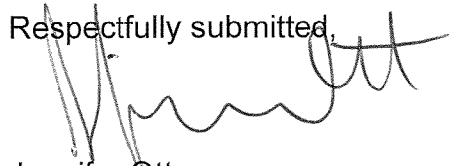
FINANCIAL IMPACT

The funds for this contract are budgeted in the Community Development account for Active Server Pages (ASP), #481003-61066, and the Fire Department account for Contractual Services #3220-61060.

RECOMMENDATION

Award a contract in the amount of \$69,390 annually for a period of five years to Accela, Inc. for Accela Automation Land Management and Citizen Access software licenses and managed service fees, and authorize the Acting City Manager to execute the contract and related documents.

Respectfully submitted,



Jennifer Ott
Deputy City Manager

By:



Gregory McFann
Building Official



Michael Fisher
Acting Fire Chief

Honorable Mayor and
Members of the City Council

March 15, 2011
Page 3 of 3

Approved as to funds and account,

A handwritten signature in black ink, appearing to read "Fred Marsh". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fred Marsh
Controller

Exhibit:

1. Accela Contract

CONSULTANT AGREEMENT

THIS AGREEMENT, entered into this 1st day of April 2011, by and between CITY OF ALAMEDA, a municipal corporation (hereinafter referred to as "City"), and Accela Inc. a California corporation whose address is 2633 Camino Ramon, Suite 120, Bishop Ranch 3, San Ramon, CA 94586. (hereinafter referred to as "Consultant"), is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. City and Consultant desire to enter into an agreement for Maintenance and support of building permit software hosted by Accela upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM:**

The term of this Agreement shall commence on the 1st day of April 2011, and shall terminate on the 31st day of March 2016, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED:**

Consultant shall perform each and every service as set forth:

2.1 Maintenance Services

Telephone Support. Consultant will provide City with a telephone number to contact the Customer Resource Center (CRC), Consultant's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding Consultant's observed holidays. A list of these observed holidays will be provided to the City prior to final execution of this agreement.

E-Mail Support. Consultant will provide City with one or more electronic mail addresses to which City may submit routine or non-critical support requests, which Consultant will address during its regular business hours.

Online Support. Consultant will provide City with access to archived software updates and other technical information in Consultant's online support databases, which are continuously available.

Remote Support. When required to properly resolve a maintenance request, Consultant will provide remote assistance to City via the WebEx™ Meeting Center™ environment or another mutually-acceptable remote communications method.

Software Updates. Consultant will provide revisions of and enhancements to maintained software products to City as such updates are generally-released by Consultant. Software updates will be delivered or made available to City for electronic download from Consultant's File Transfer Protocol ("FTP") site.

Maintenance Limitations. The following are not covered by this Agreement, but may be separately available at rates and on terms which may vary from those described herein:

- a) Services required due to misuse of the Consultant-maintained software products;
- b) Services required due to software corrections, customizations, or modifications not developed or authorized by Consultant;
- c) Services required by City to be performed by Consultant outside of Consultant's usual working hours;
- d) Services required due to external factors not related to the Software;
- e) Services required to resolve or work-around conditions which cannot be reproduced in Consultant's support environment;
- f) Services which relate to tasks other than maintenance of City's existing implementation and configuration of the Consultant-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;
- g) Services requested by City to implement software updates provided by Consultant pursuant to this Agreement; and
- h) New or additional applications, modules, or functionality released by Consultant during the term of this Agreement.

Legacy Releases. Consultant will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Consultant will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Consultant will not be provided pursuant to this Agreement, but may be separately available at rates and on terms which may vary from those described herein.

2.2 Hosting Services

Scope of Hosting Services. Consultant will provide the hosting services described in this Section for the following software products: Accela Automation® Land Management and Accela Citizen Access™ ("Hosted Applications"):

System Administration and Security. The Hosted Applications will be hosted by Consultant on Consultant-owned equipment at a physically-secure commercial third-party hosting facility. Consultant will perform system administration duties as required to maintain the service levels described below and to facilitate timely restoration of City's data and operations, if necessary, following unanticipated interruptions of the Hosted Applications. Consultant will implement suitable network security measures to minimize the likelihood of unanticipated interruptions of the Hosted Applications.

Infrastructure Availability. Consultant will provide City with no less than twenty-four (24) hours' notice prior to Hosted Applications unavailability due to planned maintenance and will provide five (5) business days' notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature. Excluding the foregoing planned events, Consultant warrants that the Hosted Applications will be generally-available no less than ninety-eight percent (98%) of each calendar day. For each calendar day during which the availability of the Hosted Applications does not achieve the established standard, Consultant will credit one hundred dollars (\$100.00) to City's account as liquidated damages, provided that the substandard availability is identified by City in writing or by e-mail to Consultant and can be objectively verified. Credits accumulated pursuant to this Section may be applied to additional Consultant products and/or services, but will not be refunded to City.

2.3 Warranty

Consultant will commence and complete the obligations described in this Agreement in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of Consultant's industry, to ensure that the operation and availability of the maintained and hosted applications do not materially differ from documented specifications. Consultant may make repeated efforts within a reasonable time period to resolve operational issues. When an operational issue cannot be resolved, City's exclusive remedy will be damages in an amount equal to the total of maintenance and hosting fees paid to Consultant for the defective or non-conforming software products during the twelve (12) calendar months immediately preceding the occurrence of the unresolved operational issue.

3. COMPENSATION TO CONSULTANT:

Consultant shall be compensated for services performed pursuant to this Agreement in the amount set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference. Payment shall be made by checks drawn on the treasury of the City, to be taken from the Community Development fund, and Fire Department.

4. **TIME IS OF THE ESSENCE:**

Consultant and City agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE:**

Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

6. **INDEPENDENT PARTIES:**

City and Consultant intend that the relationship between them created by this Agreement is that of employer-independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by City to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant.

6. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Consultant assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Consultant shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Consultant.

7. **NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Consultant or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

8. **HOLD HARMLESS:**

Indemnification:

Consultant shall indemnify, defend, and hold harmless City, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to

Consultant's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Consultant, Consultant shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Consultant. However, Consultant shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

Indemnification For Claims for Professional Liability:

As to Claims for professional liability only, Consultant's obligation to defend Indemnitees (as set forth above) is limited to the extent to which its professional liability insurance policy will provide such defense costs.

9. **INSURANCE:**

On or before the commencement of the term of this Agreement, Consultant shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C, D and E. Such certificates, which do not limit Consultant's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, Attention: Risk Manager." It is agreed that Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

A. **COVERAGE:**

Consultant shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000
 each occurrence
 \$2,000,000
 aggregate - all other

Property Damage: \$100,000 each occurrence
 \$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automotive liability coverage in the following

minimum limits:

Bodily Injury: \$1,000,000 each occurrence

Property Damage: \$250,000 each occurrence

or

Combined Single Limit: \$10,000,000 each occurrence

(4) **Professional Liability:**

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$2,000,000.

B. **SUBROGATION WAIVER:**

Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her insurance for recovery. Consultant hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or City with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against City by virtue of the payment of any loss under such insurance.

C. **FAILURE TO SECURE:**

If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **ADDITIONAL INSURED:**

City, its City Council, boards and commissions, officers, employees and volunteers shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

10. **CONFLICT OF INTEREST:**

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

11. **PROHIBITION AGAINST TRANSFERS:**

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Consultant. Notwithstanding, Consultant may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.

12. **SUBCONTRACTOR APPROVAL:**

Unless prior written consent from City is obtained, only those people and subcontractors whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

13. **PERMITS AND LICENSES:**

Consultant, at his/her sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, that may be required in connection with the performance of services hereunder.

14. **CITY DATA.** City warrants that it exclusively owns its data and that it has both the right and the authority to provide such data to Consultant. City retains full ownership of its data and grants to Consultant a limited, nonexclusive, nontransferable license to use said data only to perform Consultant's obligations in accordance with the terms and conditions of this Agreement. Within thirty (30) calendar days following termination or expiration of this Agreement, City may request that Consultant provide a complete copy of City's data, as such may be updated or modified by City's use of the hosted applications, to City in a machine-readable format. Consultant will comply in a timely manner with such request, provided that City a) pay all costs of and associated with such copying, as calculated at Consultant's then-current time-and-material rates; and b) pays all unpaid amounts due Consultant.

15. **RECORDS:**

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement.

Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in

accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Consultant shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

16. **NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Consultant to City shall be addressed to City at:

City of Alameda
2263 Santa Clara Avenue, Room 190
Alameda CA 94501
Attention: Erin Garcia

All notices, demands, requests, or approvals from City to Consultant shall be addressed to Consultant at:

Accela, Inc.
2633 Camino Ramon, Suite 120
Bishop Ranch 3
San Ramon, California 94583

17. **TERMINATION:**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of seven (7) ~~two (2)~~ days after receipt by Consultant from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, City may terminate the Agreement forthwith by giving to the Consultant written notice thereof.

City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Consultant as provided herein. Upon termination of this Agreement, each party shall pay to the other party that

portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

18. **COMPLIANCES:**

Consultant shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City.

19. **CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.)

Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

20. **CONFIDENTIALITY**

Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Consultant or City may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, , business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information, to the extent permitted under all applicable laws, including California Public Records Act. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information, to the extent permitted under all applicable laws, including the California Public Records Act. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this Agreement or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Publicity Section below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to all applicable laws, including the California Public Records Act.

Confidentiality Term. The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this Agreement ("Confidentiality Term").

Confidentiality Obligations. During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

21. **PROPRIETARY RIGHTS**

The remedial methods, software updates, and product information provided to City pursuant to this Agreement are protected under the laws of the United States and the individual states and by international treaty provisions. Consultant retains full ownership in such items and grants to City a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this Agreement and other agreements between Consultant and City.

22. **LIMITATION OF LIABILITY**

Consultant provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this Agreement; Consultant bears no liability for and has no obligation to remedy such effects. Except as set forth herein, Consultant provides all Maintenance Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will Consultant's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by City or any other person or entity exceed the fees paid to Consultant by City during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if Consultant or its agents have been advised of the possibility of such damages.

23. **ADVERTISEMENT:**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

24. **WAIVER:**

A waiver by either party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

25. **INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Consultant. The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders.

26. **INSERTED PROVISIONS:**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

27. **CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first written.

CONSULTANT

Accela Inc



By Colin Samuels

Title Asst. Corp. Secretary

CITY OF ALAMEDA

A Municipal Corporation

By Lisa Goldman

Title Acting City Manager

RECOMMENDED FOR APPROVAL:



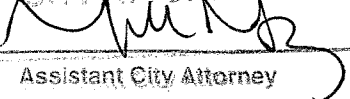
By Gregory J. McFann

Title Building Official

Approved as to Form

CITY ATTORNEY

By:


Assistant City Attorney

By Michael J. Fisher

Title Interim Fire Chief

APPROVED AS TO FORM:
City Attorney

By
Title Assistant City Attorney

EXHIBIT A - COMPENSATION

Deliverables	Fees
First-Term Annual Managed Service Fees for Accela Automation Land Management™ (31 Users – Building Department)	\$61,969.00
15% Customer Discount	(\$9,295.35)
First-Term Annual Managed Service Fees for Accela Citizen Access (Building Department)	\$2,848.00
50% Customer Discount	(\$1,424.00)
First-Term Annual Managed Service Fees for Accela Automation Land Management (9 Users – Fire Department)	\$17,991.00
15% Customer Discount	(\$2,698.65)
Sub-Total of Fees	\$69,390.00
Second-Term Annual Managed Service Fees for Accela Automation Land Management (31 Users – Building Department)	\$61,969.00
15% Customer Discount	(\$9,295.35)
Second -Term Annual Managed Service Fees for Accela Citizen Access (Building Department)	\$2,848.00
50% Customer Discount	(\$1,424.00)
Second -Term Annual Managed Service Fees for Accela Automation Land Management (9 Users – Fire Department)	\$17,991.00
15% Customer Discount	(\$2,698.65)
Sub-Total of Fees	\$69,390.00
Third-Term Annual Managed Service Fees for Accela Automation Land Management (31 Users – Building Department)	\$61,969.00
15% Customer Discount	(\$9,295.35)
Third -Term Annual Managed Service Fees for Accela Citizen Access (Building Department)	\$2,848.00
50% Customer Discount	(\$1,424.00)
Third -Term Annual Managed Service Fees for Accela Automation Land Management (9 Users – Fire Department)	\$17,991.00
15% Customer Discount	(\$2,698.65)
Sub-Total of Fees	\$69,390.00
Fourth-Term Annual Managed Service Fees for Accela Automation Land Management (31 Users – Building Department)	\$61,969.00
15% Customer Discount	(\$9,295.35)
Fourth -Term Annual Managed Service Fees for Accela Citizen Access (Building Department)	\$2,848.00
50% Customer Discount	(\$1,424.00)
Fourth -Term Annual Managed Service Fees for Accela Automation Land Management (9 Users – Fire Department)	\$17,991.00
15% Customer Discount	(\$2,698.65)
Sub-Total of Fees	\$69,390.00
Fifth-Term Annual Managed Service Fees for Accela Automation Land Management (31 Users – Building Department)	\$61,969.00
15% Customer Discount	(\$9,295.35)
Fifth -Term Annual Managed Service Fees for Accela Citizen Access (Building Department)	\$2,848.00
50% Customer Discount	(\$1,424.00)
Fifth -Term Annual Managed Service Fees for Accela Automation Land Management (9 Users – Fire Department)	\$17,991.00
15% Customer Discount	(\$2,698.65)
Sub-Total of Fees	\$69,390.00
Total of Fees	\$346,950.00

First-Term Managed Service Fees cover the period of April 1, 2011 to March 31, 2012 and are due on April 1, 2011.
Second-Term Managed Service Fees cover the period of April 1, 2012 to March 31, 2013 and are due on April 1, 2012.
Third-Term Managed Service Fees cover the period of April 1, 2013 to March 31, 2014 and are due on April 1, 2013.
Fourth-Term Managed Service Fees cover the period of April 1, 2014 to March 31, 2015 and are due on April 1, 2014.
Fifth-Term Managed Service Fees cover the period of April 1, 2015 to March 31, 2016 and are due on April 1, 2015.

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